

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TARYN M. H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 3:24-cv-05348-GJL

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule 13. *See also* Consent to Proceed Before a United States Magistrate Judge, Dkt. 3. This matter has been fully briefed. *See* Dkts. 7, 11, 12.

Having considered the ALJ's decision, the record, and all memoranda of record, this matter is **REVERSED** and **REMANDED** for further administrative proceedings.

**I. PROCEDURAL HISTORY**

Plaintiff's application for Disability Insurance Benefits (DIB) was denied initially and following reconsideration. *See* Administrative Record (AR) 279–85. A hearing was held on Plaintiff's claim before ALJ Marilyn Mauer in September 2019 (AR 50–82) and another hearing

1 was held before ALJ Alan Erickson in May 2020 (AR 83–110). ALJ Erickson issued an  
2 unfavorable decision that month (AR 198–220) which was vacated by the Appeals Council (AR  
3 221–26). ALJ Erickson held another hearing in August 2021 (AR 111–36) and issued another  
4 unfavorable decision that month (AR 227–56) which was also vacated by the Appeals Council  
5 (AR 257–63). ALJ David Johnson (the ALJ) held a fourth hearing on May 1, 2023. AR 137–67.  
6 He issued a decision finding Plaintiff not disabled on July 25, 2023. AR 14–49. The Appeals  
7 Council denied Plaintiff’s request for review on April 8, 2024, making the written decision of the  
8 ALJ the final agency action subject to judicial review. AR 1–6. Plaintiff filed a Complaint in this  
9 Court seeking judicial review of the ALJ’s decision on May 8, 2024. Dkt. 1. Defendant filed the  
10 sealed AR in this matter on July 8, 2024. Dkt. 5.

## 11 II. BACKGROUND

12 Plaintiff was born in 1979 and was 36 years old on her alleged date of disability onset of  
13 January 16, 2016. *See* AR 17, 35. She has at least a high school education. AR 35. Her date last  
14 insured was December 31, 2021. AR 18. According to the ALJ, Plaintiff suffers from, at a  
15 minimum, the severe impairments of post-traumatic cervical dystonia and a depressive disorder.  
16 AR 20. However, the ALJ found Plaintiff not disabled because she had the following Residual  
17 Functional Capacity (RFC):

18 to perform light work [...] that does not require standing more than 1 hour at a time  
19 and 4 hours total in a workday; that does not require walking more than 40 minutes  
20 at a time and 2.5 hours total in a workday; that does not require sitting more than 1  
21 hour at a time and 6 hours total in a workday; that does not require lifting or carrying  
22 more than 20 pounds occasionally and 10 pounds frequently; that does not require  
23 crawling or climbing of ladders, ropes, or scaffolds; that does not require more than  
24 occasional balancing, stooping, kneeling, or crouching; that does not require more  
than occasional reaching overhead; that does not require more than frequent  
reaching in other directions; that does not require more than occasional exposure to  
vibration or extreme cold; that consists of instructions that are not complex; and  
that is quota-based rather than production-paced.

1 AR 24.

### 2 III. DISCUSSION

3 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of  
4 benefits if, and only if, the ALJ’s findings are based on legal error or not supported by  
5 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th  
6 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

7 In her opening brief, Plaintiff argues the ALJ erred (1) in addressing her subjective  
8 symptom testimony, (2) in addressing the medical opinion evidence, (3) in formulating the RFC,  
9 and (4) because his Step Five finding was not supported by substantial evidence. Dkt. 7.

#### 10 A. Subjective Symptom Testimony

11 Plaintiff challenges the ALJ’s assessment of her testimony about her neck pain. Dkt. 7 at  
12 13–16. Plaintiff testified she has severe neck pain amplified by movement; that she will often  
13 move her neck around after sitting for more than ten to fifteen minutes, causing pain; and that  
14 this pain causes difficulties with concentration and sitting and requires her to take multiple  
15 breaks throughout the day. *See* AR 143–44.

16 The ALJ was required to “offer[] specific, clear, and convincing reasons” for discounting  
17 Plaintiff’s testimony. *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014). The  
18 Commissioner argues the ALJ did so by pointing to (1) the objective medical evidence, (2)  
19 Plaintiff’s activities of daily living, and (3) evidence of medical improvement. Dkt. 11 at 3–8.  
20 The Court disagrees and finds these were not adequate reasons supported by substantial  
21 evidence.

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1        Objective Medical Evidence.<sup>1</sup> The ALJ found Plaintiff’s testimony inconsistent with  
 2 medical evidence which:

3            found [her] to have a supple to minimally reduced range of motion of the neck, good to  
 4 full motor strength of the bilateral extremities, normal sensation of the bilateral  
 5 extremities, normal muscle bulk of the bilateral extremities, and normal deep tendon  
 6 reflexes with a normal unassisted gait.

7 AR 26. The ALJ erred because he did not explain, nor can the Court discern, how this evidence  
 8 was inconsistent with Plaintiff’s pain testimony. *See Ferguson v. O’Malley*, 95 F.4th 1194, 1200  
 9 (9th Cir. 2024) (“[T]o satisfy the substantial evidence standard, the ALJ must . . . explain why  
 10 the medical evidence is *inconsistent* with the claimant’s subjective symptom testimony.”)  
 11 (emphasis in original). Notations of a “supple to minimally reduced range of motion of the neck”  
 12 from voluntary movement in the limited context of an examination do not contradict Plaintiff’s  
 13 testimony that she experienced pain caused by persistent involuntary motion due to her cervical  
 14 dystonia impairment.<sup>2</sup> Similarly, normal examinations of Plaintiff’s extremities are not  
 15 necessarily inconsistent with Plaintiff’s allegations pertaining to her neck.<sup>3</sup>

16        Activities of Daily Living. The ALJ summarized many of Plaintiff’s activities and  
 17 asserted they were “inconsistent with the degree and type of limitation asserted.” *See* AR 25–26;  
 18 *see also Orn v. Astrue*, 495 F.3d 623, 639 (9th Cir. 2007) (activities valid basis to discount  
 19 testimony if inconsistent with alleged symptoms). But the activities discussed—such as going to

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20 <sup>1</sup> Defendant contends Plaintiff forfeited a challenge to the ALJ’s discussion of the objective medical evidence (Dkt.  
 21 11 at 5) but Plaintiff challenged this same evidence in discussing the medical opinion evidence (Dkt. 7 at 5–6).

22 <sup>2</sup> *See* Cervical Dystonia, Mayo Clinic (accessed Nov. 6, 2024) <https://www.mayoclinic.org/diseases-conditions/cervical-dystonia/symptoms-causes/syc-20354123?p=1> (“Cervical dystonia . . . is a painful condition in which your neck muscles contract involuntarily, causing your head to twist or turn to one side. Cervical dystonia can also cause your head to uncontrollably tilt forward or backward.”).

23 <sup>3</sup> Defendant points to several other purported inconsistencies such as the lack of muscle wasting (Dkt. 11 at 4) but  
 24 the ALJ did not identify such inconsistencies and, therefore, the Court does not consider them. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003) (“We are constrained to review the reasons the ALJ asserts.”).

1 the zoo, traveling, occasionally using the internet, taking her kids to visit their father, grooming  
2 her horses, and driving—are not apparently inconsistent with her testimony. Plaintiff testified,  
3 and the ALJ did not acknowledge, that she does many of her activities while dealing with pain or  
4 with assistance of others. *See e.g.*, AR 124–25 (family assists with cooking and laundry). Under  
5 such circumstances, it is difficult to discern how the identified activities were inconsistent with  
6 her pain testimony, and the ALJ’s assertion to the contrary was insufficient to establish they  
7 were. *See Brown-Hunter v. Colvin*, 804 F.3d 487, 492 (9th Cir. 2015) (The ALJ must “set forth  
8 the reasoning behind [his] decision[] in a way that allows for meaningful review.”).

9 Improvement. The ALJ described some of Plaintiff’s treatment measures but made no  
10 finding that these measures were effective in resolving her symptoms. *See* AR 25. This rationale  
11 was an insufficient basis upon which to reject Plaintiff’s testimony. *See Holohan v. Massanari*,  
12 246 F.3d 1195, 1205 (9th Cir. 2001) (“[S]ome improvement” in a person’s symptoms “does not  
13 mean that the person’s impairments no longer seriously affect her ability to function in a  
14 workplace.”). Moreover, the ALJ’s decision did not suggest he was relying upon such measures  
15 in discounting Plaintiff’s testimony, and therefore the Court cannot affirm on this basis. *See*  
16 *Connett*, 340 F.3d at 874.

17 In sum, the ALJ failed to give specific, clear, and convincing reasons for discounting  
18 Plaintiff’s subjective symptom testimony. Defendant does not dispute that such an error requires  
19 reversal, and, thus, the Court reverses. *See* Dkt. 11; *Ferguson*, 95 F.4th at 1204 (“The  
20 Commissioner does not contend that the ALJ’s error was harmless. Consequently, we reverse the  
21 judgment”).  
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1 **B. Remaining Issues**

2 Because the Court has determined the ALJ reversibly erred in evaluating Plaintiff's  
3 subjective testimony, it declines to consider Plaintiff's remaining arguments concerning the  
4 medical opinion evidence, the RFC, and the ALJ's Step Five findings. On remand, the ALJ  
5 should reassess the medical evidence and, if warranted, the RFC and his step five finding.

6 Plaintiff requests the Court remand for an award of benefits. Dkt. 7 at 18. After  
7 considering the record, the Court concludes remand for further proceedings is the appropriate  
8 remedy, as there remain ambiguities in the medical evidence, including among medical opinions.  
9 *See Garrison*, 759 F.3d at 1022; AR 29–33 (assessing conflicting medical opinions, some of  
10 which were not challenged by Plaintiff and supported RFC).

11 **IV. CONCLUSION**

12 Based on these reasons and the relevant record, the Court **ORDERS** that this matter be  
13 **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further  
14 proceedings consistent with this order.

15 Dated this 14th day of November, 2024.

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18 Grady J. Leupold  
19 United States Magistrate Judge  
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